



**JURISDICTION AND VENUE**

1  
2 1. Defendants admit only that the Complaint purports that this is an  
3 action for damages, preliminary injunctive relief, and permanent injunctive relief,  
4 arising under (1) Section 43(a) of the Lanham Act, (2) the Copyright Laws of the  
5 United States, 17 U.S.C. § 101 *et seq.*, (3) the Patent Laws of the United States, 35  
6 U.S.C. § 271 *et seq.*, and (4) California state breach of contract law. Except as  
7 expressly admitted herein, Defendants deny each and every remaining allegation in  
8 Paragraph 1.

9 2. Parties cannot confer subject matter jurisdiction on a court.  
10 Nevertheless, Defendants do not contest subject matter jurisdiction in this District  
11 for the limited purpose of this action only.

12 3. Defendants do not contest that venue is proper in this District for the  
13 limited purpose of this action only.

**THE PARTIES**

14  
15 4. Defendants lack knowledge or information sufficient to form a belief  
16 as to the truth of the allegations in Paragraph 4 and, therefore, deny them.

17 5. Defendants admit that Coastal Cocktails, Inc. (hereinafter, "Coastal")  
18 is a California corporation which does business as Modern Gourmet Foods.  
19 Except as expressly admitted herein, Defendants deny each and every remaining  
20 allegation in Paragraph 5.

21 6. Defendants admit that Mark Greenhall (hereinafter, "Mr. Greenhall")  
22 is an individual living in Newport Beach. Defendants do not challenge that this  
23 Court has personal jurisdiction over Mr. Greenhall. Except as expressly admitted  
24 herein, Defendants deny each and every remaining allegation in Paragraph 6.

25 7. Defendants admit that Mr. Greenhall is the President of Coastal.  
26 Except as expressly admitted herein, Defendants deny each and every remaining  
27 allegation in Paragraph 7.

28 8. Defendants deny the allegations of Paragraph 8 of the Complaint.

**STATEMENT OF FACTS**

9. Defendants admit that what purports to be a depiction of Globefill's bottle packaging in the shape of a skull (hereinafter, the "Alleged Trade Dress") is attached to the Complaint as Exhibit A. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 9 of the Complaint, and therefore deny those allegations.

10. Defendants admit that United States Trademark Registration Certificate No. 4043730 states on its face "Globefill Incorporated (Canada Corporation)," "the mark consists of a configuration of a bottle in the shape of a skull," and "for: alcoholic beverages, namely, vodka." Defendants further admit that what purports to be a copy of United States Trademark Registration Certificate No. 4043730 is attached to the Complaint as Exhibit B. Except as expressly admitted herein, Defendants deny each and every remaining allegation in Paragraph 10.

11. Defendants deny the allegations of Paragraph 11 of the Complaint.

12. Defendants admit that United States Copyright Registration No. VA 1-766-939 states on its face that "registration has been made for the work identified below." Defendants further admit that what purports to be a copy of United States Copyright Registration No. VA 1-766-939 is attached to the Complaint as Exhibit C. Except as expressly admitted herein, Defendants deny each and every remaining allegation in Paragraph 12.

13. Defendants admit that United States Copyright Registration No. VA 1-766-939 states on its face that the "Year of Completion" was 2007, the "Date of 1st Publication" was September 30, 2008, and the "Effective date of registration" was April 11, 2011. Except as expressly admitted herein, Defendants deny each and every remaining allegation in Paragraph 13.

14. Defendants admit that United States Patent No. D589,360 (hereinafter, the "'360 Patent") states on its face that it claims "[t]he ornamental

1 design for a bottle, as shown and described.” Defendants admit that the ’360  
2 Patent also states on its face that it was issued on March 31, 2009. Defendants  
3 further admit that what purports to be a copy of the ’360 Patent is attached to the  
4 Complaint as Exhibit D. Except as expressly admitted herein, Defendants deny  
5 each and every remaining allegation in Paragraph 14.

6 15. Defendants admit that what purports to be photographs of cocktail  
7 mix in skull-shaped bottles are attached to the Complaint as Exhibit E. Except as  
8 expressly admitted herein, Defendants deny each and every remaining allegation in  
9 Paragraph 15.

10 16. Defendants admit that Globefill, in September 2014, filed a lawsuit  
11 against Coastal in the United States District Court for the Central District of  
12 California, Southern Division, designated Civil Action No. 14-cv-01486 DOC  
13 (DFMx) (hereinafter, the “Lawsuit”), purporting to allege claims for federal  
14 trademark infringement and federal unfair competition. Defendants admit that  
15 what purports to be a copy of the complaint filed in the Lawsuit is attached to the  
16 Complaint as Exhibit F. Except as expressly admitted herein, Defendants deny  
17 each and every remaining allegation in Paragraph 16.

18 17. Defendants admit that following service of the complaint filed in the  
19 Lawsuit, Coastal entered into settlement discussions with Globefill. Defendants  
20 admit that what purports to be a photograph of Coastal’s previous hot sauce  
21 product in skull-shaped bottles is attached to the Complaint as Exhibit G. Except  
22 as expressly admitted herein, Defendants deny each and every remaining allegation  
23 in Paragraph 17.

24 18. Defendants admit that on March 2, 2015, Globefill and Coastal  
25 entered into a written settlement agreement (hereinafter, the “Settlement  
26 Agreement”), executed by Mr. Greenhall for Coastal. The document speaks for  
27 itself. Defendants admit that what purports to be a copy of the Settlement  
28 Agreement is attached to the Complaint as Exhibit H. Except as expressly

1 admitted herein, Defendants deny each and every remaining allegation in  
2 Paragraph 18.

3 19. Defendants admit that what purports to be a photograph of Coastal's  
4 hot sauce product in skull-shaped bottles is attached to the Complaint as Exhibit I.  
5 Except as expressly admitted herein, Defendants deny each and every remaining  
6 allegation in Paragraph 19.

7 20. Defendants admit that in October 2016, John Weber, who, upon  
8 information and belief, is counsel for Globefill, sent a communication to Douglas  
9 Morseburg, former counsel for Coastal. Except as expressly admitted herein,  
10 Defendants deny each and every remaining allegation in Paragraph 20.

11 21. Defendants deny the allegations of Paragraph 21 of the Complaint.

12 **FIRST CLAIM FOR RELIEF**

13 **ALLEGED FEDERAL UNFAIR COMPETITION**

14 22. Defendants incorporate by reference their responses to Paragraphs 1-  
15 21, as set forth above.

16 23. Defendants deny the allegations of Paragraph 23 of the Complaint.

17 24. Defendants deny the allegations of Paragraph 24 of the Complaint.

18 25. Defendants deny the allegations of Paragraph 25 of the Complaint.

19 **SECOND CLAIM FOR RELIEF**

20 **ALLEGED COPYRIGHT INFRINGEMENT**

21 26. Defendants incorporate by reference their responses to Paragraphs 1-  
22 25, as set forth above.

23 27. Defendants deny the allegations of Paragraph 27 of the Complaint.

24 28. Defendants deny the allegations of Paragraph 28 of the Complaint.

25 29. Defendants deny the allegations of Paragraph 29 of the Complaint.

26 30. Defendants deny the allegations of Paragraph 30 of the Complaint.

**THIRD CLAIM FOR RELIEF**

**ALLEGED INFRINGEMENT OF THE '360 PATENT**

31. Defendants incorporate by reference their responses to Paragraphs 1-30, as set forth above.

32. Defendants deny the allegations of Paragraph 32 of the Complaint.

33. Defendants admit only that Globefill has not expressly licensed Defendants under the '360 Patent. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 33 of the Complaint, and therefore deny those allegations.

34. Defendants deny the allegations of Paragraph 34 of the Complaint.

35. Defendants deny the allegations of Paragraph 35 of the Complaint.

36. Defendants deny the allegations of Paragraph 36 of the Complaint.

**FOURTH CLAIM FOR RELIEF**

**ALLEGED BREACH OF CONTRACT**

37. Defendants incorporate by reference their responses to Paragraphs 1-36, as set forth above.

38. Defendants admit only that the Settlement Agreement constitutes a binding written contract between Globefill and Coastal. Except as expressly admitted herein, Defendants deny each and every remaining allegation in Paragraph 38.

39. Defendants deny the allegations of Paragraph 39 of the Complaint.

40. Defendants deny the allegations of Paragraph 40 of the Complaint.

41. Defendants deny the allegations of Paragraph 41 of the Complaint.

**REQUEST FOR JUDGMENT**

Defendants deny that Plaintiff is entitled to any of the relief sought in paragraphs A-G of Plaintiff's request for judgment. Defendants further deny that Plaintiff is entitled to any of the relief requested in the Complaint or to any relief whatsoever. Defendants lack sufficient knowledge or information to form a belief

1 as to the truth of the remaining allegations contained in paragraphs A-G of  
 2 Plaintiff's request for judgment, and therefore deny those allegations.

### 3 **AFFIRMATIVE DEFENSES**

4 Without prejudice to the denials set forth in their Answer, and without  
 5 admitting any allegations of the Complaint not expressly admitted, Defendants  
 6 assert the following affirmative defenses to the Complaint without assuming the  
 7 burden of proof on any such defense that would otherwise rest with Plaintiff.

#### 8 **FIRST AFFIRMATIVE DEFENSE**

##### 9 **FAILURE TO STATE A CLAIM**

10 42. As to each claim for relief, Plaintiff has failed to state a claim upon  
 11 which relief can be granted.

#### 12 **SECOND AFFIRMATIVE DEFENSE**

##### 13 **NO UNFAIR COMPETITION AND NO TRADE DRESS INFRINGEMENT**

14 43. Defendants or either of them have not engaged in any unfair  
 15 competition or "false designation of origin in the nature of trade dress  
 16 infringement" vis-à-vis Plaintiff and have not otherwise engaged in any unlawful  
 17 activity likely to cause confusion, or mistake, or deception as to the affiliation,  
 18 connection, or association of any products of Defendants or either of them. The  
 19 identified United States Trademark Registration Certificate No. 4043730 and the  
 20 Alleged Trade Dress only confer a protectable interest, if at all, in the particular  
 21 goods identified in the aforementioned Registration and as such have no bearing on  
 22 any alleged unfair competition, "false designation of origin in the nature of trade  
 23 dress infringement," or any other alleged unlawful activity.

#### 24 **THIRD AFFIRMATIVE DEFENSE**

##### 25 **COPYRIGHT NON-INFRINGEMENT**

26 44. Defendants or either of them have not infringed, and currently do not  
 27 infringe, United States Copyright Registration No. VA 1-766-939.



1 **FOURTH AFFIRMATIVE DEFENSE**

2 **PATENT NON-INFRINGEMENT**

3 45. Defendants or either of them have not infringed, and currently do not  
4 infringe, the '360 Patent directly, indirectly, contributorily, by inducement, under  
5 the doctrine of equivalents, or in any other manner.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **NO BREACH OF CONTRACT**

8 46. Defendants or either of them have not breached the Settlement  
9 Agreement.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **NO VALID TRADE DRESS**

12 47. Plaintiff has no valid, protectable trade dress in which it enjoys any  
13 rights that may be asserted against Defendants or either of them. United States  
14 Trademark Registration Certificate No. 4043730 and the Alleged Trade Dress only  
15 apply, if at all, to alcohol products, and specifically, vodka.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **COPYRIGHT INVALIDITY**

18 48. United States Copyright Registration No. VA 1-766-939 is invalid for  
19 failure to comply with the requirements for copyrightable subject matter set forth  
20 in 17 U.S.C. § 102.

21 **EIGHTH AFFIRMATIVE DEFENSE**

22 **PATENT INVALIDITY AND PATENT MISUSE**

23 49. The claims of the '360 Patent are invalid for failure to satisfy one or  
24 more of the conditions of patentability specified in Title 35 of the United States  
25 Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103, 112, and/or 171.  
26 In addition, it is unenforceable through misuse because Plaintiff knew or should  
27 have known that the claims of the '360 Patent are invalid under 35 U.S.C. §§ 101,  
28 102, 103, 112, and/or 171, but is, upon information and belief, unlawfully



1 attempting to prevent Defendants from selling hot sauce product in skull-shaped  
2 bottles, alleging infringement of a knowingly invalid patent.

3 **NINTH AFFIRMATIVE DEFENSE**

4 **FAILURE TO COMPLY WITH 35 U.S.C. § 287**

5 50. Because Plaintiff failed to comply with the notice requirements of 35  
6 U.S.C. § 287, Plaintiff cannot recover any damages for alleged infringement of the  
7 '360 Patent.

8 **TENTH AFFIRMATIVE DEFENSE**

9 **FUNCTIONALITY**

10 51. The claims made in the Complaint and the relief sought therein are  
11 barred, in whole or in part, on the basis that the elements claimed by Plaintiffs to  
12 be covered by United States Trademark Registration Certificate No. 4043730, the  
13 Alleged Trade Dress, United States Copyright Registration No. VA 1-766-939, the  
14 '360 Patent, and the use of United States Trademark Registration Certificate No.  
15 4043730, the Alleged Trade Dress, United States Copyright Registration No. VA  
16 1-766-939, and the '360 Patent are functional. Therefore, those elements are not  
17 protectable.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **LACK OF SECONDARY MEANING AND/OR DISTINCTIVENESS**

20 52. The claims made in the Complaint and the relief sought therein are  
21 barred, in whole or in part, on the basis that United States Trademark Registration  
22 Certificate No. 4043730 and the Alleged Trade Dress lack distinctiveness,  
23 including, without limitation, secondary meaning.

24 **TWELFTH AFFIRMATIVE DEFENSE**

25 **GENERIC TERMS**

26 53. The claims made in the Complaint and the relief sought therein are  
27 barred, in whole or in part, on the basis that United States Trademark Registration  
28 Certificate No. 4043730 and the Alleged Trade Dress are generic.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 **WAIVER, ACQUIESCENCE, AND ESTOPPEL**

3 54. Each of the purported claims set forth in Plaintiff's Complaint is  
4 barred by the doctrines of waiver, laches, acquiescence, equitable estoppel, unclean  
5 hands, and/or copyright and patent misuse.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 **STATUTORY DAMAGES LIMITATION**

8 55. Plaintiff's claim for damages is statutorily limited by 17 U.S.C. § 412,  
9 17 U.S.C. § 507, and/or 35 U.S.C. § 286.

10 **FIFTEENTH AFFIRMATIVE DEFENSE**

11 **ABANDONMENT**

12 56. The claims made in the Complaint are barred, in whole or in part, by  
13 abandonment of United States Trademark Registration Certificate No. 4043730  
14 and Alleged Trade Dress.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 **FAILURE TO MITIGATE**

17 57. The claims made in the Complaint are barred, in whole or in part,  
18 because of Plaintiff's failure to mitigate damages, if such damages exist. For  
19 example, Plaintiff has refused to engage in early settlement discussions with  
20 Defendants and has failed to take prompt action to try to obtain a reasonable  
21 settlement with Defendants.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **PROSECUTION HISTORY ESTOPPEL**

24 58. Plaintiff's claims are barred by the doctrine of prosecution history  
25 estoppel based on statements, representations, and admissions made during the  
26 prosecution of United States Trademark Registration Certificate No. 4043730,  
27 United States Copyright Registration No. VA 1-766-939, and the '360 Patent.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**NO EQUITABLE RELIEF**

59. As a result of Plaintiff's actions, Plaintiff is not entitled to equitable relief, including but not limited to Plaintiff's request for injunctive relief.

**NINETEENTH AFFIRMATIVE DEFENSE**

**NO WILLFUL INFRINGEMENT**

60. Plaintiff's claims for enhanced damages and an award of fees and costs against Defendants have no basis in fact or law and should be denied.

**TWENTIETH AFFIRMATIVE DEFENSE**

**THIRD-PARTY USE**

61. The claims made in the Complaint are barred, in whole or in part, by reason of other parties' use of the Alleged Trade Dress.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**NO DAMAGES**

62. Without admitting that the Complaint states a claim, there has been no damage in any amount, manner, or at all by reason of any act alleged against Defendants in the Complaint, and the relief prayed for in the Complaint therefore cannot be granted.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**NO IRREPARABLE HARM**

63. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show that it will suffer any irreparable harm from Defendants' actions.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**ADEQUATE REMEDY AT LAW**

64. The alleged injury or damage suffered by Plaintiff, if any, would be adequately compensated by damages. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 **DUPLICATIVE CLAIMS**

3 65. Without admitting that the Complaint states a claim, any remedies are  
4 limited to the extent that there is sought an overlapping or duplicative recovery  
5 pursuant to the various claims against Defendants for any alleged single wrong.

6 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

7 **UNJUST ENRICHMENT**

8 66. Plaintiff will be unjustly enriched if allowed to recover any part of the  
9 damages it has allegedly suffered or any other remedy from the alleged conduct of  
10 Defendants.

11 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

12 **CONTRARY TO PUBLIC POLICY**

13 67. To the extent that Plaintiff attempts to extend the terms of the  
14 Settlement Agreement to prevent Defendants' lawful activity, the Settlement  
15 Agreement is unenforceable and violates public policy.

16 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

17 **SPECULATIVE DAMAGES**

18 68. Plaintiff's claims for lost profits and damages are barred because  
19 Plaintiff is seeking to recover lost profits and damages that are speculative in  
20 nature.

21 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

22 **FALSE CLAIMS**

23 69. Plaintiff's claims as to Mr. Greenhall are barred as a matter of law  
24 because the Complaint makes numerous blatantly false claims. At all times  
25 thereto, Mr. Greenhall acted on behalf of Coastal. Thus, Mr. Greenhall cannot be  
26 held personally liable in this action.

1                                   **ADDITIONAL DEFENSES**

2           70. Defendants reserve the right to assert additional defenses based on  
3 information learned or obtained during discovery.

4                                   **COUNTERCLAIMS**

5           Defendants Coastal Cocktails, Inc., doing business as Modern Gourmet  
6 Foods, and Mark Greenhall (collectively, “Defendants” or “Counterclaimants”),  
7 for their counterclaims against Plaintiff Globefill Incorporated (“Plaintiff” or  
8 “Counterdefendant”), allege as follows:

9                                   **NATURE OF THE ACTION**

10          71. Plaintiff filed a Complaint against Defendants, alleging unfair  
11 competition and false designation of origin of its Alleged Trade Dress, copyright  
12 infringement, design patent infringement, and breach of contract.

13                                   **THE PARTIES**

14          72. Coastal is a California corporation having its principal place of  
15 business at 18011 Mitchell South, Suite B, Irvine, California, 92614.

16          73. Mr. Greenhall is an individual residing in Newport Beach, California.

17          74. Upon information and belief, Plaintiff is a Canadian corporation with  
18 its principal place of business at 333 Eglinton Avenue East, Toronto, Ontario,  
19 Canada M4P 1L7.

20                                   **JURISDICTION AND VENUE**

21          75. This action arises under Section 43(a) of the Lanham Act, 15 U.S.C. §  
22 1125(a); the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*; and the  
23 Patent Laws of the United States, 35 U.S.C. § 271 *et seq.* This Court has subject  
24 matter jurisdiction under 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331, 1332, 1338,  
25 2201, and 2202. This Court has subject matter jurisdiction over Plaintiff because,  
26 among other reasons, Plaintiff availed itself of the jurisdiction of this Court and  
27 engaged in acts giving rise to this controversy in this District. There is a justiciable  
28 controversy under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

1           76. Venue is appropriate in the District under 28 U.S.C. §§ 1391 and  
2 1400(a)-(b).

3                                   **STATEMENT OF FACTS**

4           77. On March 13, 2017, Plaintiff and Counterdefendant Globefill  
5 Incorporated filed a Complaint against Defendants and Counterclaimants Coastal  
6 Cocktails, Inc., doing business as Modern Gourmet Foods, and Mark Greenhall.  
7 The Complaint alleges causes of action for unfair competition and false  
8 designation of origin under Section 43(a) of the Lanham Act, copyright  
9 infringement, design patent infringement, and breach of contract.

10          78. Plaintiff alleges in its Complaint that it is the owner of all intellectual  
11 property rights consisting of and embodied in the Alleged Trade Dress.

12          79. Among these alleged intellectual property rights, Plaintiff alleges that  
13 it is the owner of United States Trademark Registration No. 4,043,730. During  
14 prosecution of the alleged federal trademark registration, Globefill stated that “the  
15 mark is in use in commerce on or in connection with all of the goods/all of the  
16 services . . . listed in the existing registration for this specific class: alcoholic  
17 beverages, namely, vodka.”

18          80. In addition, during prosecution of United States Trademark  
19 Registration No. 4,043,730, the Examining Attorney refused registration on  
20 grounds of non-distinctiveness. In so refusing, the Examining Attorney stated that  
21 “the applied-for mark consists of a nondistinctive configuration of packaging for  
22 the goods . . . the skull shape is a commonly used decorative shape that would be  
23 viewed by consumers not as an indication of source, but rather, merely as a  
24 decoration or ornamental feature of the packaging of the goods.” In support of her  
25 statement that the skull-shaped design was a “commonly used decorative shape,”  
26 the Examining Attorney further attached numerous depictions of prior skull-shaped  
27 objects, including, but not limited to, skull-shaped glass mugs, beer glasses, glass  
28

1 pitchers, glass poison bottles, bowls, dishes, telephones, chocolate candies,  
2 earbuds, headphones, DVD players, candles, and USB drives.

3 81. In response to this rejection, Globefill made several narrowing  
4 arguments that limited its federal trademark registration to skull product packaging  
5 in the alcohol and spirits industry, and specifically, vodka. In particular, Globefill  
6 stated in a June 27, 2010 Response to Office Action that “It is hard to imagine how  
7 an alcoholic beverage could be encased in a more distinctive package than  
8 Applicant’s Skull Product Packaging . . . Applicant submits a representative list of  
9 vodka and photographs of the bottles for those vodkas, as it is apparent,  
10 Applicant’s bottle is the only skull-shaped bottle . . . Furthermore, Applicant’s  
11 Skull Product Packaging has been recognized as unique in the industry . . .  
12 Applicant’s Skull Product Packaging is the only skull-shaped bottle in the  
13 alcoholic industry. In addition to being unique as a container in the spirits field. . .  
14 . Applicant’s Skull Product Packaging is especially unique in the alcoholic  
15 beverage industry and indeed is the only one of its kind in the market. Applicant’s  
16 Skull Product Packaging also does not describe anything about its particular  
17 content, vodka . . . The evidence the examining attorney relies on does not . . .  
18 reflect any use of the skull shape in the alcoholic beverage industry . . . Applicant’s  
19 Skull Product Packaging is a[] unique container configuration in relation to vodka.  
20 . . .”

21 82. Thus, on information and belief, Globefill narrowed the scope of its  
22 federal trademark registration to the use of the skull-shaped bottle design in  
23 connection with alcoholic beverages, namely, vodka. Coastal’s hot sauce product  
24 in skull-shaped bottles is an unrelated good to those that United States Trademark  
25 Registration No. 4,043,730 is directed towards, as it is not vodka or an alcoholic  
26 beverage.



83. In its Complaint, Globefill also alleges that it is the owner of United States Copyright Registration No. VA 1-766-939 and that Defendants have infringed United States Copyright Registration No. VA 1-766-939.

84. United States Copyright Registration No. VA 1-766-939 claims a glass bottle designed in the shape of an anatomical human skull. It is well-established in the copyright case law that, if otherwise valid, this copyright registration is limited only to the artistic features in the claimed skull-bottle design that are not governed by human anatomy or the glass medium. Thus, the scope of United States Copyright Registration No. VA 1-766-939 is narrow.

85. Globefill further alleges in its Complaint that it is the owner of the '360 Patent. The '360 Patent claims "[t]he ornamental design for a bottle, as shown and described." Figures 1-6 of the '360 Patent depict a glass bottle designed in the shape of an anatomical human skull. It is well-established in the patent case law that, if otherwise valid, this design patent is limited to only the ornamental aspects of the claimed design, and does not extend to the associated functional aspects. Further, there are several prior art references directed to skull-shaped bottle designs that were in the public domain as of at least 1875, such as U.S. Design Patent Nos. D23,399; D49,569; D117,550; D164,265; D431,463; D459,213. Thus, the scope of the '360 Patent, if otherwise valid, is also narrow.

### **DEFENDANTS' FIRST COUNTERCLAIM**

#### **DECLARATORY JUDGMENT OF NO UNFAIR COMPETITION AND NO TRADE DRESS INFRINGEMENT**

86. Defendants refer to and incorporate the allegations of Paragraphs 71-85 of their Counterclaims above.

87. An actual and justiciable controversy exists between Plaintiff and Defendants as to the alleged unfair competition, the alleged "false designation of origin in the nature of trade dress infringement," and other alleged unlawful

1 activity, as evidenced by Plaintiff's Complaint and Defendants' Answer to that  
2 Complaint, set forth above.

3 88. Pursuant to the Federal Declaratory Judgment Act, Defendants request  
4 a declaration of the Court that Defendants have not engaged in, and are not  
5 engaging in, unfair competition, "false designation of origin in the nature of trade  
6 dress infringement," and other alleged unlawful activity.

### 7 **DEFENDANTS' SECOND COUNTERCLAIM**

#### 8 **DECLARATORY JUDGMENT OF COPYRIGHT NON-INFRINGEMENT**

9 89. Defendants refer to and incorporate the allegations of Paragraphs 71-  
10 88 of their Counterclaims above.

11 90. An actual and justiciable controversy exists between Plaintiff and  
12 Defendants as to the non-infringement of United States Copyright Registration No.  
13 VA 1-766-939, as evidenced by Plaintiff's Complaint and Defendants' Answer to  
14 that Complaint, set forth above.

15 91. Pursuant to the Federal Declaratory Judgment Act, Defendants request  
16 a declaration of the Court that Defendants do not infringe and have not infringed  
17 United States Copyright Registration No. VA 1-766-939.

### 18 **DEFENDANTS' THIRD COUNTERCLAIM**

#### 19 **DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT**

20 92. Defendants refer to and incorporate the allegations of Paragraphs 71-  
21 91 of their Counterclaims above.

22 93. An actual and justiciable controversy exists between Plaintiff and  
23 Defendants as to the non-infringement of the '360 Patent, as evidenced by  
24 Plaintiff's Complaint and Defendants' Answer to that Complaint, set forth above.

25 94. Pursuant to the Federal Declaratory Judgment Act, Defendants request  
26 a declaration of the Court that Defendants do not infringe and have not infringed  
27 the '360 Patent.  
28

**DEFENDANTS' FOURTH COUNTERCLAIM**

**DECLARATORY JUDGMENT OF TRADE DRESS INVALIDITY AND UNENFORCEABILITY**

95. Defendants refer to and incorporate the allegations of Paragraphs 71-94 of their Counterclaims above.

96. An actual and justiciable controversy exists between Plaintiff and Defendants as to the invalidity and unenforceability of the Alleged Trade Dress, as evidenced by Plaintiff's Complaint and Defendants' Answer to that Complaint, set forth above.

97. Pursuant to the Federal Declaratory Judgment Act, Defendants request a declaration of the Court that the Alleged Trade Dress is invalid and unenforceable.

**DEFENDANTS' FIFTH COUNTERCLAIM**

**DECLARATORY JUDGMENT OF COPYRIGHT INVALIDITY AND UNENFORCEABILITY**

98. Defendants refer to and incorporate the allegations of Paragraphs 71-97 of their Counterclaims above.

99. An actual and justiciable controversy exists between Plaintiff and Defendants as to the invalidity and unenforceability of United States Copyright Registration No. VA 1-766-939, as evidenced by Plaintiff's Complaint and Defendants' Answer to that Complaint, set forth above.

100. Pursuant to the Federal Declaratory Judgment Act, Defendants request a declaration of the Court that United States Copyright Registration No. VA 1-766-939 is invalid and unenforceable.

**DEFENDANTS' SIXTH COUNTERCLAIM**

**DECLARATORY JUDGMENT OF PATENT INVALIDITY AND UNENFORCEABILITY**

101. Defendants refer to and incorporate the allegations of Paragraphs 71-100 of their Counterclaims above.

102. An actual and justiciable controversy exists between Plaintiff and Defendants as to the invalidity and unenforceability of the '360 Patent, as evidenced by Plaintiff's Complaint and Defendants' Answer to that Complaint, set forth above.

103. Pursuant to the Federal Declaratory Judgment Act, Defendants request a declaration of the Court that the '360 Patent is invalid and unenforceable.

### **DEFENDANTS' SEVENTH COUNTERCLAIM**

#### **DECLARATORY JUDGMENT OF NO BREACH OF CONTRACT**

104. Defendants refer to and incorporate the allegations of Paragraphs 71-103 of their Counterclaims above.

105. An actual and justiciable controversy exists between Plaintiff and Defendants as to the alleged breach of the Settlement Agreement, as evidenced by Plaintiff's Complaint and Defendants' Answer to that Complaint, set forth above.

106. Pursuant to the Federal Declaratory Judgment Act, Defendants request a declaration of the Court that Defendants or either of them have not breached the Settlement Agreement.

### **PRAYER FOR RELIEF**

WHEREFORE, Defendants and Counterclaimants deny that Plaintiff is entitled to any of the relief sought in its request for judgment or any relief whatsoever. Defendants and Counterclaimants respectfully request that this Court enter judgment in their favor, and against Plaintiff, as follows:

A. That Plaintiff be denied all relief requested in its Complaint;

B. That Plaintiff's Complaint be dismissed with prejudice in its entirety and that Plaintiff take nothing by its Complaint;

C. That the Court enter a declaration that Defendants or either of them have not engaged in, and are not engaging in, unfair competition, "false designation of origin in the nature of trade dress infringement," and other alleged unlawful activity.

1 D. That the Court enter a declaration that Defendants or either of them  
2 have not infringed and do not infringe United States Copyright Registration No.  
3 VA 1-766-939 and the '360 Patent;

4 E. That the Court enter a declaration that the Alleged Trade Dress,  
5 United States Copyright Registration No. VA 1-766-939, and the '360 Patent are  
6 invalid and unenforceable;

7 F. That the Court enter a declaration that Defendants or either of them  
8 have not breached the Settlement Agreement;

9 G. That the Court enter a declaration that this case is exceptional and that  
10 Defendants be awarded their costs, expenses, and reasonable attorneys' fees  
11 pursuant to 15 U.S.C. § 1117, 35 U.S.C. § 285, and 17 U.S.C. § 505;

12 H. That Defendants be awarded such other and further relief as the Court  
13 deems just and equitable.

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15  
16 Dated: May 15, 2017

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

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19 By: /s/ Lisa D. Zang

Lisa D. Zang

20  
21 Attorneys for Defendants and  
Counterclaimants  
22 COASTAL COCKTAILS, INC., dba  
MODERN GOURMET FOODS, and MARK  
23 GREENHALL  
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**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38, Defendants and Counterclaimants Coastal Cocktails, Inc., doing business as Modern Gourmet Foods, and Mark Greenhall hereby demand a jury trial of all issues triable by a jury.

Dated: May 15, 2017

WILSON SONSINI GOODRICH & ROSATI  
Professional Corporation

By: /s/ Lisa D. Zang

Lisa D. Zang

Attorneys for Defendants and  
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COASTAL COCKTAILS, INC., dba  
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